

CHAPTER 16 - Cooperative Agreements

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CHAPTER 16 - Cooperative Agreements

ARTICLE 1 - Formal and Informal Agreements

Purpose of Agreements

Some projects will include features essential to the operation of the facility that are financed jointly through a cooperative agreement with another agency. Adjoining work by another agency may be included with the State's work to take advantage of the economies of a larger contract or to reduce inconvenience to the public.

In addition, Special Funded Projects need to have the roles and responsibilities for funding and staffing identified through a Cooperative Agreement. (See Chapter 2, Section 6, of this manual.)

Cooperative Agreements

A Cooperative Agreement is defined as any formal, legally-binding contract between the State of California and a city, county, or any other public non-State entity whereby the parties to the Agreement agree to either share in the costs of — or cooperate jointly in — a project. A Cooperative Agreement outlines the responsibilities and respective obligations of the parties to the Agreement, such as liability, ownership, right of way, utilities, maintenance, etc. A project may require more than one agreement to cover any combination of planning, design, right of way acquisition, or construction phases.

Cooperative Agreements may be entered into when the other party is a governmental agency other than a city or county, such as a school district that requires noise abatement measures, or a county sales-tax-measure authority.

Other Formal Agreements

Interagency Agreements

Formal agreements between Caltrans and another State agency.

Highway Improvement Agreements

Formal agreements between Caltrans and private entities.

Informal Agreements

Memorandums of Understanding

Caltrans will occasionally sign a Memorandum of Understanding (MOU) with entities to outline each entity's intentions or responsibilities for the various phases of project development and construction. MOUs are not legally binding and cannot be used to commit resources. Cooperative Agreements should be executed as early as possible in the process to limit the use of MOUs.

"For Further Reference"

For further definitions of types of agreements and contracts, see the "Project Development Agreements and Services Matrix" found in Chapter 3 of the *Cooperative Agreement Manual*.

ARTICLE 2 - Policy and Authority

Execute Agreement Prior to Incurring Costs

It is Caltrans' policy to have a formal Cooperative Agreement executed prior to incurring any costs or committing any personnel resources. The State has no legal authority or obligation to incur expenses in absence of a formal executed agreement.

Types of Cooperative Agreement Projects

Caltrans has authority to enter into Cooperative Agreements for the following types of projects.

Joint-Funded Cooperative Projects

These are projects that involve transfer of either State Highway Account funds or regular local funding to the other party. Such projects are covered by Streets and Highways Code Sections 114 and 130. Joint-funded projects are funded partly with State programmed funds and partly with any combination of local funds, local sales tax funds, or private funds.

Locally funded Projects

Caltrans policy requires Caltrans and local public entities to enter into Cooperative Agreements for all projects on the State Highway System within the existing or future State Highway right of way, if they meet all of the following criteria:

1. Financed (a.) entirely by locally-imposed fees, or revenues from other local sources, including retail transactions and use taxes not included in a tax measure authority's expenditure plan, or (b.) less than 50% by retail

transactions and use taxes included in a tax measure authority's expenditure plan, with the remaining funds coming from local sources

2. Construction costs exceeding \$1 million

Local Sales-Tax-Measure Projects

Caltrans policy requires Caltrans and local public entities to enter into Cooperative Agreements for all projects on the State Highway System within the existing or future State Highway right of way, if they meet all of the following criteria:

1. Financed 50% or more by retail transactions and use taxes included in a tax measure authority's expenditure plan, with the remaining funds coming from local sources
2. Construction costs exceeding \$1 million

Projects costing less than \$1 million are covered by the Encroachment Permit process and may require a Cooperative Agreement (See *Local Programs Manual*).

ARTICLE 3 - Cooperative Agreements Process

Authorizing Documents

All proposed Cooperative Agreements are covered by an authorizing document approved by the District Director. Authorizing document types include the following:

- Project Study Report (PSR)
- Combined Project Study Report / Project Report (PSR/PR)
- Project Report (PR) or Draft Project Report
- Cooperative Agreement Report (CAR)

A PSR, Draft PR, PR, or a Combined PSR/PR normally addresses cooperative features such as the assignment and justification of funding and staffing responsibilities for each party participating in the agreement. However, when additional cooperative obligations are identified, a CAR is prepared as a separate report to fully explain and justify the proposed cooperative effort. A combined "Project Report-Cooperative Agreement Report" format must not be used. A Project Report or a Cooperative Agreement Report should be prepared, as appropriate. **An authorizing document must accompany copies of Cooperative Agreements when they are submitted to Headquarters.**

Staffing and Lead Agency

Recommendations on lead agency role and staffing responsibilities up to and through approval of the environmental document should be clearly outlined in the PSR. Staffing responsibilities for the design, right of way, and construction phases should be covered in the PSR in a general way, with refinement in later documents, as appropriate. See Chapter 8, Section 4.

Authority to Negotiate Terms

Approval of the authorizing document constitutes authority to initiate negotiations with the cooperating agency regarding contents and wording of the draft Cooperative Agreement. However, all Cooperative Agreements (except preapproved agreement forms) must be submitted in draft form to Design and Local Program (DLP), Attention: Cooperative Agreements for legal and procedural review prior to submitting to a cooperating agency in final form for execution. Modifications to preapproved forms are limited to that provided within the language options of each form — unless approved in advance by DLP.

State's obligations in a Cooperative Agreement duly executed by the State and the cooperating agency are always subject to appropriation by the Legislature and the allocation of resources by the CTC.

"For Further Reference"

For more specific details, preapproved forms, etc., refer to the *Cooperative Agreement Manual*.